UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,078	01/14/2002	Mark Edmund Hooper	04834-007-US-02	8017

56535 7590 09/25/2008

BROUILLETTE & PARTNERS
METCALFE TOWER, 1550 METCALFE STREET
SUITE 800
MONTREAL, QC H3A-1X6
CANADA

EXAMINER	
SHELEHEDA, JAMES R	

ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
09/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK EDMUND HOOPER, CLAIRE LANGLOIS,
And FRANCOIS CLOUTIER

Appeal 2008-1103
Application 09/937,078
Technology Center 2600

Decided: September 24, 2008

Before MAHSHID D. SAADAT, ROBERT E. NAPPI,
and KARL D. EASTHOM, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 28-38, which are all of the claims pending in this application as claims 1-27 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to a method for remote display of selected images at selected times (Spec. ¶ [0001]). An understanding of the invention can be derived from a reading of independent claim 28, which is reproduced as follows:

> 28. A method for the display of multimedia content on one or more display screens operatively connected to respective display controllers, said display of multimedia content being made according to playlists comprising multiple air time periods and stored on said display controllers, said display controllers being connected to a scheduling server and a transmission control system via a data communication network, said method comprising the following steps:
>
> a) selecting the multimedia content to be displayed;
>
> b) storing said multimedia content on said scheduling server;
>
> c) selecting one of said display screens on which said multimedia content is to be displayed;
>
> d) storing such display screen selection on said scheduling server;
>
> e) on said scheduling server, determining and storing data related to the availability of said air time periods of said playlists;
>
> f) on said scheduling server, inputting and storing data related to the multimedia content preferences of each user of a visual display system;
>
> g) on said scheduling server, inputting and storing data related to the air time period preferences of each user in said playlist schedule of a visual display system;
>
> h) creating said playlists by optimally correlating said available air time periods, said air time period preferences and said multimedia content preferences;
>
> i) transmitting said stored multimedia content and said playlists to said display controllers connected to said selected display screen;

j) displaying said selected multimedia content on said selected display screen according to said playlists.

The Examiner relies on the following prior art references:

Cho	US 5,566,353	Oct. 15, 1996
Berezowski	US 6,075,551	Jun. 13, 2000
Hendricks	US 6,738,978 B1	May 18, 2004 (effectively filed Dec. 9, 1992)
Chen	US 7,039,784 B1	May 2, 2006 (filed Dec. 20, 2001)

The rejections as presented by the Examiner are as follows:

Claims 28, 29, 31, 32, 36, and 38 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cho.[1]

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho and Chen.

Claim 37 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho and Hendricks.

Claims 32-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho and Berezowski.

We make reference to the Brief (filed Feb. 6, 2007), Reply Brief (filed Aug. 2, 2007), and the Answer (mailed Jun. 7, 2007) for the respective positions of Appellants and the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants did not make in the Briefs have not been considered. *See* 37 C.F.R. § 41.37(c)(1)(vii).

[1] The rejection of claim 29 under the first paragraph of 35 U.S.C. § 112 has been withdrawn by the Examiner (Ans. 3).

ISSUES

1. Under 35 U.S.C. § 102(b), with respect to the appealed claims 28, 29, 31, 32, 36, and 38, does Cho anticipate the claimed subject matter by teaching all of the claimed limitations?
2. Under 35 U.S.C. § 103(a), with respect to the remaining appealed claims, would the ordinarily skilled artisan have found it obvious to modify Cho, with various other applied references to render the claimed invention unpatentable?

FINDINGS OF FACT

1. Cho relates to a video media distribution network including (1) a distribution center which transmits video program segments to the receiving sites, (2) receivers which receive the segments, (3) a tracking system which tracks the product movement at the receiving sites, (4) a network management system which forms playlists for each of the receiving sites in response to inputs from a user, and (5) display units which display the playlists in the receiving sites. (Col. 2, ll. 39-48).

2. Cho uses a network management system which allows the user to create programs by scheduling and sequencing the clips comprised of digitized videos which are to be displayed in retail stores. The network management system determines what is to be displayed at each of the retail stores along with when it is displayed. Moreover, the network management system monitors which clips are located in each receiving site and which additional clips are required in each receiving site to display the desired programs. This information is then used to determine which clips will be sent from the distribution center to each receiving site. (Col. 9, ll. 47-57).

3. According to Cho, playlists are lists of video clips that are to be displayed at each of the retail stores. (Col. 9, ll. 58-59).

4. The Network Management software of Cho includes a plurality of databases such as Playlist Database, Clip Library Database, and Template Database. (Col. 11, ll. 14-17).

5. The Playlist Database of Cho has, for example, (1) a table of playlist names which includes the playlist IDs along with the template IDs, and (2) a contents table for each playlist that gives information on the clips (e.g., clip sequence number) included in each playlist. (Col. 11, ll. 27-35).

6. The Clip Library Database of Cho has, for example, (1) a table of valid clip types including a clip description and valid run times for each of the valid clip types and (2) a video clip table including the clip number, the clip title, the clip type, the clip run time and the clip frequency rate. (Col. 11, ll. 36-40).

7. The Template Database of Cho has, for example, (1) a table of playlist templates including the template ID, the creating operator, the date of creation, the finalizing operator and the date of finalization and (2) a template ID contents table including sequence numbers, clip type and clip duration. (Col. 11, ll. 41-46).

8. According to Cho, the user can also edit a playlist and/or create a new playlist depending on the user's security level. When the user selects the Edit Playlist option, displays a list of the contents of the selected playlist, the contents of the template used to construct that playlist, and the contents of the system's clip library. The Template Database, the Playlist Database and the Clip Library Database provide the information needed for this

display. The template predefines the order of certain types of selected video clips. (Col. 12, l. 54 to col. 13, l. 13).

9. As shown in Figure 9 of Cho, when the user enters the edit mode, the program displays the contents of the selected template and the possible clip types along with associated valid clip durations. The Template Database and the Clip Library Database provide the information needed for this display and the user then builds/modifies the selected template using selections from the possible clip types. (Col. 13, ll. 45-53).

10. . To create a new playlist, the New Playlist Form and the Open Template Form are loaded and the user (having the required security level – *see* FF 8) inputs the name of the new playlist along with any comments the user may have. In sum, when creating a new playlist, the user gets an empty template to fill. (Col. 14, ll. 5-19).

PRINCIPLES OF LAW

1. Scope of claims

"[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Philips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Furthermore, specification is the single best guide to the meaning of a claim term. *Phillips v. AWH Corp.*, 415 F.3d at 1315 (Fed. Cir. 2005). *See also Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). A claim is given its broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Claims will be given their

broadest reasonable interpretation consistent with the Specification, and limitations appearing in the Specification are not to be read into the claims. *In re Etter*, 756 F.2d 852, 858 (Fed. Cir. 1985).

2. Anticipation

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *See In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). "Anticipation of a claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

3. Obviousness

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-988 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (*citing In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

1. 35 U.S.C. § 102 Rejection over Cho

Regarding representative claim 28, Appellants argue that a user of Cho's system creates a particular template adapted to his/her needs which

allows only that user to "input" his/her preferences and prevents the other users from inputting theirs (App. Br. 14). Appellants further assert that by editing a template, the user is actually creating a playlist that cannot be customized, instead of inputting his/her preferences which allows the system to create the playlists according to the preferences of each of the users (App. Br. 14-15).

The Examiner initially asserts that the recited inputting and storing data *related* to multimedia preferences does not refer to the specific multimedia preferences of each user and only requires *data related to* multimedia preferences be inputted (Ans. 4). Additionally, the Examiner argues that the claim provides no specific requirement as to how or by whom inputting of the data related to the multimedia preferences of each user is performed (Ans. 4). The Examiner concludes that the portions of Cho cited from columns 12 and 13 teach that the data related to the preferred types of clips and their display order are included in a template to create a playlist according to the inputted preferences (Ans. 4-6).

Based on our review of Cho and the breadth of the recited language in claim 28, we disagree with Appellants' argument that the claimed inputting and storing data related to the preferences of each user requires any specific way of inputting data or order by which the preferences are inputted. Giving the claims their broadest reasonable interpretation, we find that claim 28 does not preclude each user separately or together with other users from inputting preferences to be used in creating a playlist. Similarly, contrary to Appellants assertion (Reply Br. 3) that the playlist would not be optimal if users can edit the playlist and override their preferences, the claims require

no optimization of the playlist with respect to modifying the user's preferences after they are inputted, nor any protection of the preferences.

We also find that the Examiner's reliance on Cho for teaching the recited features of claim 1 to be reasonable. Cho provides for distributing video program segments according to a playlist (FF 1) which is formed based on the desire of the user with respect to the content and the display period of video clips available for selection (FF 2-3). With respect to using a template by the users to input their preferences, Cho provides the template as a tool for inputting preferences by selecting data from the databases related to the video program content preferences of the user (FF 4-7). Cho allows the user to edit or create a new playlist based on the user's selections from the Playlist Database, Clip Library Database, and Template Database (FF 8). Cho further allows for inputting data related to the content and the air time period or the clip duration (FF 9). The inputted data is processed by Cho's template forms which either provide the selected data for editing or allow the user to start inputting in a new template (FF 10).

Based on the teachings of Cho outline above, we disagree with Appellants (App. Br. 14-15) that using a template forces a pattern and does not take into account the user's preferences. In fact the user selects from the available databases content, duration, and the clip information that are used for forming the playlist, and the template merely acts as a grid that defines the arrangement and structure of the inputted data. As long as the user in Cho makes selections from the databases to be used for generating a playlist, as argued by the Examiner (Ans. 6), the claimed feature is met since arranging the inputted data in a template is not precluded by the claims.

We also find Appellants' argument that Cho does not teach the claimed "inputting and storing data related to the air time period preferences of each user" (App. Br. 15-17) to be without merit. Cho clearly includes clip run time and duration as the elements available to the user to be inputted and stored by adding them to the template similar to the claimed "data related to the air time period preferences" (FF 8-9). We also note that the steps of "inputting and storing data" related to content, air time period, and available air time periods merely constitute non-functional descriptive material which should not be given patentable weight. However, as discussed above, the Examiner has shown that Cho discloses inputting and storing the same type of data.

Appellants further argue that step h) of the recited method of claim 28 requires "creating said playlist by optimally correlating" the available air time period and other preferences is not taught by Cho since Cho requires that all playlists must conform to their respective templates (App. Br. 18). While we agree with Appellants to the extent that Cho provides some degree of structure for the inputted and stored data related to the user preferences, we do not find that the generated playlist is non-optimal. As argued by the Examiner (Ans. 8-9), Cho's correlation of the duration and content of the clips as placed in the template is optimal to some degree since the playlist is created based on the same preferences as recited in claim 28 (FF 9-10).

Therefore, to the extent claimed, Cho discloses all the steps of the claimed method and thus, anticipates claim 28. Based on our analysis above, since all of the claimed limitations are present in the disclosure of Cho, we sustain the Examiner's 35 U.S.C. § 102(b) rejection of independent

claim 28, as well as independent claim 29 and dependent claims 31, 32, 36, and 38 which are argued by Appellants as one group (App. Br. 22).

2. 35 U.S.C. § 103 Rejections over Cho in view of Chen, Berezowski, or Hendricks

Appellants provide no separate arguments in support of patentability of claims 30, 32-35, and 37 and merely rely on their dependency upon the base claim 29 (App. Br. 22-23). For the same reasons stated above with respect to claims 28 and 29, we sustain the 35 U.S.C. § 103(a) rejection of claim 30 over Cho and Chen, of claims 32-35 over Cho and Berezowski, and of claim 37 over Cho and Hendricks.

CONCLUSION

On the record before us, Appellants have failed to show that the Examiner erred in rejecting claims 28-38. In view of our analysis above, we affirm the Examiner's decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

BROUILLETTE & PARTNERS
METCALFE TOWER, 1550 METCALFE STREET
SUITE 800
MONTREAL, QC H3A-1X6 CA CANADA